

1 Sunday evenings.

2 Q With regard to that, and your contacting the  
3 Network about programming that would then be heard on WJUX,  
4 Ms. Friedman referred you to the transcript of your  
5 deposition. I do not know whether you still have a copy of  
6 it.

7 A Yes, I do.

8 Q Would you look at transcript Page 45 of your  
9 deposition, Ms. Montana? Are you there?

10 A Yes, I am.

11 Q Would you read beginning at Line 16 of Page 45?

12 A I'm sorry. You said Line 16?

13 Q Yes. I do not mean for you to read this into the  
14 record. I want to ask you a question if you will read this,  
15 and then continue to Page 46.

16 A Okay.

17 Q Now, if you are down to Line 11 of Page 46, let me  
18 ask you the question Ms. Friedman asked you, and whether  
19 this refreshes your recollection of the testimony that you  
20 gave at your deposition.

21 Would you ever make a point in transmitting  
22 announcements to the Network that you felt something  
23 warranted special coverage?

24 A Yes, I did.

25 Q And did you so testify at your deposition?

1           A     Yes, I did. I believe that's on Line 7.

2           Q     Now, would you look at transcript Page 66? If you  
3 would begin at Page 66 at Line 5, and read down through Line  
4 17 of that page, does that also refresh your recollection,  
5 with respect to your transactions with the Network on public  
6 service announcements and --

7           A     Yes.

8           Q     Did you then find that the Network adopted the  
9 recommendations you made as to public service announcements  
10 and snow closings and so on?

11          A     Yes.

12          Q     Now, if you would go back to Page 46 of your  
13 transcript, look at Line 16, and read to the bottom of that.  
14 Is that consistent with the testimony you gave this morning  
15 that you would talk on the telephone with people with the  
16 Network?

17          A     I believe it was, yes.

18          Q     Would you, on occasion, talk on the telephone with  
19 people at the network about public service announcements?

20          A     Occasionally.

21          Q     Ms. Friedman asked you questions about a  
22 telephone, and her questions were in the nature of the  
23 existence for WXTM when that station now WJUX began  
24 operating. One of her questions had to do with the question  
25 of whether there was a telephone listing for WXTM. I heard

1 your answer this morning.

2 Do you know for a fact whether there was or was  
3 not a telephone listing available through the telephone  
4 company's directory assistance for WXTM in the early days of  
5 its operation?

6 A I do not know if there was a telephone listing  
7 before there was an actual phone placed on my desk.

8 Q Let me see whether I can jog your memory on that.  
9 When are directories released for the telephone service area  
10 in Sullivan County?

11 A The Sullivan County phone book is published and  
12 released in May.

13 Q Each year?

14 A Of each year, yes.

15 Q Do you know whether there was a listing for WXTM  
16 in the first directory that was published after --

17 MR. HELMICK: Your Honor, objection. I do not  
18 think there has been any question on telephone list  
19 directory listings.

20 MR. RILEY: There was by Ms. Friedman.

21 THE COURT: Yes, there was.

22 BY MR. RILEY:

23 Q Do you know whether there was a listing for WXTM  
24 in the directory that would have been the first one  
25 published after it went on the air in May of 1995?

1 A I recall that there was one.

2 Q Do you know what the closing date is to have a  
3 listing published in the directory?

4 A No, I do not.

5 Q But the first listing that would have been  
6 published would have been in May of 1995?

7 A Since the station signed on in October, 1994, yes.  
8 The first one would have been in '95.

9 Q Ms. Friedman referred you to testimony that began  
10 on Page 10 of your deposition transcript. And I would like  
11 to refer you back to that. Ms. Friedman's reference was  
12 beginning at Line 24 toward the bottom of the page.

13 A Okay.

14 Q Would you read that testimony in your deposition  
15 transcript from Line 24 through Line 8 on Page 11, which is  
16 what Ms. Friedman referred you to.

17 A Okay.

18 Q Does that testimony refer to public affairs  
19 programs broadcast on WJUX?

20 A I'm sorry. I didn't understand the question.

21 Q Does the testimony that you gave there, and did  
22 you understand the questions asked there, to refer to public  
23 affairs programs?

24 A Yes. It refers to public affairs programming.

25 Q And not to public service announcements?

1           A     That's the way I understood the question, that it  
2     was something different.

3           THE COURT:   Which question?   The question in your  
4     deposition, or the question here today?

5           THE WITNESS:   The question in my deposition refers  
6     to programming as opposed to public service announcements,  
7     which I consider something totally different.

8           BY MR. RILEY:

9           Q     You were asked questions about the quarterly issue  
10    of programming lists for WJUX?

11          A     That's correct.

12          Q     You received those lists when they are prepared.  
13    Is that your testimony?

14          A     That's correct.

15          Q     What do you do with them when you receive them?

16          A     I put them in the WJUX public file, which there  
17    are two copies of.   One stays in the lobby of WVOS, and the  
18    other one is in the Monticello Public Library.

19          Q     There is an exhibit in this proceeding, Ms.  
20    Montana that has been received in evidence as Monticello  
21    Mountaintop Broadcasting Exhibit --

22          THE COURT:   Three.

23          MR. RILEY:   It is Exhibit 3.   Let me put a copy of  
24    this in front of you, Ms. Montana.

25

1 BY MR. RILEY:

2 Q Do you recall executing the declaration covered in  
3 that exhibit?

4 A Yes, I do.

5 Q Did you do so at my request?

6 A Yes, I did.

7 Q Are the documents that are behind that declaration  
8 just as your declaration states, copies of the issues and  
9 programs list from the public inspection file?

10 A Yes, they are.

11 Q Have you examined those at my request?

12 A Yes, I did.

13 Q What is your opinion about whether these programs  
14 provide service to the people of Sullivan County, Monticello  
15 and Liberty?

16 MR. HELMICK: Objection, Your Honor. There has  
17 been no direct examination on these matters. And Ms.  
18 Montana said she had nothing to do with preparing these  
19 lists.

20 THE COURT: Mr. Riley?

21 MR. RILEY: My response would be that I thought it  
22 would enrich the record in the immortal words of Jerome  
23 Boros.

24 THE COURT: I think the questioning was on the  
25 preparation of these, and Ms. Montana said she --

1 MR. RILEY: Did not prepare them. That is  
2 correct. That is exactly what the prior testimony was.

3 THE COURT: I think that is the extent of the  
4 prior testimony. I think I am going to sustain the  
5 objection.

6 MR. RILEY: Okay. The list will speak for  
7 themselves.

8 THE COURT: You could not pick a different person  
9 to quote from?

10 MR. RILEY: I just remembered his line so well.

11 BY MR. RILEY:

12 Q You were asked about whether there was any changes  
13 made at WJUX following the FCC inspection in early '95 --

14 A Yes, I was.

15 Q I think it was in April of 1995. I think  
16 everybody would agree that was the time of the visit. And  
17 you gave certain answers. One of the answers you gave was,  
18 thereafter, George Spicka was hired. And after he was  
19 hired, began originating E.B.S. tests from the WJUX studio  
20 there in the WVOX/WJUX office studio complex.

21 Do you recall that?

22 A I do.

23 Q I think your testimony was, aside from that and  
24 other enumerated matters, the phone on your desk, a sign on  
25 the street and in front of the building with the WJUX call

1 sign on it, that there were no other changes made that you  
2 were aware of or recall.

3 A That's correct.

4 Q Does that mean there were no changes, to your  
5 knowledge, to the WJUX main studio physically at that time?

6 A At that time.

7 Q Well, then, would Mr. Spicka have been able to  
8 originate programming from that studio prior to the FCC  
9 inspection?

10 A Absolutely.

11 Q Would it have been necessary for Mr. Spicka to  
12 make a visit outside of that building to any location to  
13 originate programming?

14 A Not that I know of.

15 Q Is there a transmitter in that building?

16 A Yes, there is.

17 Q What transmitter is in the building?

18 A The WVOS AM transmitter is in that building.

19 Q Are you aware of whether there is any switch by  
20 that transmitter related to originating programming from the  
21 WJUX studio room?

22 A At that time, there was.

23 Q How far is that transmitter from the WJUX studio  
24 room?

25 A Ten, fifteen feet down the hall.



1 MR. HELMICK: Your Honor, I would ask that the  
2 questions and answers be stricken. There has been  
3 absolutely no questions of Ms. Montana on this issue.

4 MR. RILEY: Absolutely wrong, Your Honor.

5 THE COURT: There was a lot of questioning about  
6 whether programming was ever originated.

7 MR. HELMICK: Then ask her about the capability.

8 THE COURT: Well, without the capability, how can  
9 there be programming originated? Ms. Montana said that  
10 before the FCC inspection, there was no programming  
11 originated out of that studio. And I think that the  
12 capability of doing so is within the scope of that area of  
13 inquiry. So, the objection is overruled.

14 BY MR. RILEY:

15 Q You were asked about your contacts with Mr. Weis  
16 and also about contacts with Mr. Turro. You were asked  
17 about the chain of command in WJUX in Monticello  
18 Mountaintop.

19 A Yes.

20 Q You indicated that Mr. Blabey was your immediate  
21 superior, and that your ultimate superior was Mr. Weis.

22 A That's correct.

23 Q What was your understanding about who could give  
24 you directions with respect to programming for WJUX? Let me  
25 give a concrete example of it. What was your understanding

1 about who could give you directions about whether you were  
2 or were not to prepare a list of bulletin board  
3 announcements?

4 A To the best of my recollection, Mr. Blabey  
5 directed me to send bulletin board announcements, psa's to  
6 the Network.

7 Q What was your understanding of who could give Mr.  
8 Blabey directions to do that?

9 A His immediate supervisor, who would be Mr. Weis.

10 MR. RILEY: That is the last question I have for  
11 Ms. Montana, Your Honor.

12 THE COURT: I just want to add something about the  
13 capability objection that you had. Ms. Montana is your  
14 witness and you are sponsoring her. But that would not  
15 prevent Mr. Riley or Mr. Naftalin from perhaps bringing her  
16 back here after all the testimony was complete for rebuttal.  
17 And part of that rebuttal could be her knowledge of the  
18 capability of the studios to originate programming.

19 So, even if that questioning was not within the  
20 scope of your direct, he could bring her in here next week,  
21 make her his witness, and ask her the questions. I just do  
22 not see much point in him doing that. And if you want to  
23 examine her on that, and you want her examination to be in  
24 the nature of cross-examination, I think it is very fair  
25 that you do that. But that is within your discretion.

1 I also should point that there has been much, much  
2 questioning of the other witnesses in this proceeding, that  
3 might not technically be within the scope of whatever was  
4 asked before. But if the information is useful to the  
5 record, I think that is the important thing. Not the legal  
6 technicalities.

7 So, do you have any redirect?

8 MR. HELMICK: We do, Your Honor. Could we just  
9 take a minute off the record.

10 THE COURT: All right

11 (Whereupon, a short recess was taken.)

12 THE COURT: We are back on the record. Any  
13 redirect?

14 MR. HELMICK: Just a couple of questions, Your  
15 Honor.

16 REDIRECT EXAMINATION

17 BY MR. HELMICK:

18 Q Ms. Montana, in response to Mr. Riley's question  
19 to you about the ability to originate programming from the  
20 WJUX studio, you said there was a switch at the WVOS  
21 transmitter?

22 A It was in the transmitter rack on a piece of  
23 network equipment.

24 Q A piece of network equipment. Do you mean Jukebox  
25 Radio Network equipment?

1           A     I believe it was network equipment. I'm not sure.  
2     But there was a switch on a piece of equipment that was in  
3     the rack, that had WVOX equipment on top and below it.

4           Q     Where was that rack physically located?

5           A     In the AM transmitter room at the WVOX main  
6     studio.

7           Q     Where is that room in relation to the WJUX main  
8     studio?

9           A     As I answered before, it was about ten or fifteen  
10    feet down the hallway.

11           THE COURT: Down the hallway from the --

12           THE WITNESS: From the WJUX studio. Yes.

13           BY MR. HELMICK:

14           Q     So, if you were in the WJUX studio, there is no  
15    way that you could originate programming physically from  
16    that studio to the WJUX transmitter?

17           MR. EDMUNDSON: I object. That is argumentative,  
18    Your Honor.

19           THE COURT: I overrule that.

20           THE WITNESS: Could you clarify that question?

21           BY MR. HELMICK:

22           Q     If the switch that you are talking about is  
23    located in the WVOX equipment rack ten or fifteen feet down  
24    the hallway from the WJUX studio, and you are in the WJUX  
25    studio, is there any way, physically, from that studio to

1 originate programming to the WJUX transmitter?

2 A Without throwing the switch?

3 Q Yes.

4 A To the best of my knowledge, no.

5 THE COURT: What did the switch do?

6 THE WITNESS: I don't know.

7 THE COURT: Okay. You know there was a switch.

8 THE WITNESS: There was a switch that had to be, I  
9 believe, in the up position, in order to originate  
10 programming.

11 THE COURT: But you know there was a switch?

12 THE WITNESS: Yes.

13 THE COURT: You know where it was?

14 THE WITNESS: Yes.

15 THE COURT: And you know that if someone wants to  
16 originate programming from WJUX studio, the switch had to be  
17 thrown?

18 THE WITNESS: That's correct.

19 THE COURT: And then if the switch were thrown,  
20 what would somebody have to do to originate programming from  
21 that WJUX studio?

22 THE WITNESS: Play something on the cart deck.

23 THE COURT: But once the switch was thrown and the  
24 studio would operate as any other radio station studio or  
25 the project studio --

1 THE WITNESS: To the best of my limited --

2 THE COURT: -- knowledge.

3 THE WITNESS: Yes.

4 MR. HELMICK: No further questions.

5 THE COURT: You are excused. Thank you very much  
6 for coming in.

7 MS. FRIEDMAN: Your Honor, we reserve the right to  
8 recall the witness.

9 THE COURT: Okay. Were you combining?

10 MR. HELMICK: No. I was speaking for Universal,  
11 Your Honor.

12 THE COURT: Oh. I am sorry. Do you have re-  
13 direct?

14 MS. FRIEDMAN: No. Just that we would reserve the  
15 right to recall her.

16 THE COURT: Well, what would you recall her for?

17 MS. FRIEDMAN: As a rebuttal witness.

18 THE COURT: To rebut what?

19 MS. FRIEDMAN: We have to see what other testimony  
20 is elicited.

21 THE COURT: Well --

22 MR. EDMUNDSON: Your Honor, can I just get my oar  
23 in for the record?

24 THE COURT: Your oar? Okay. You have a right if  
25 you want to try to persuade me to allow you to ask

1 clarifying questions. But please do not quote Jerry Boros.

2 MR. EDMUNDSON: Yes. Laying that aside, taking  
3 one thing at a time, I think the witness, who came here  
4 under subpoena, they ought to take her testimony and be done  
5 with it. I do not know what this rebuttal is all about.  
6 She ought to be excused and permitted to go back to New York  
7 State.

8 MR. RILEY: It seems to me the Bureau could try to  
9 persuade you to issue another subpoena. But they are trying  
10 now to continue this subpoena, as I understand it.

11 THE COURT: Well, let me put it this way. This is  
12 kind of a screwy case, in that we have a direct case that  
13 was put in. Then, we have a rebuttal case that was put in,  
14 because in my humble estimation, that was the only logical  
15 way to do it. Until Monticello Mountaintop and Mr. Turro  
16 saw your case, there was no way for them to prepare  
17 exhibits, because they did not know what they had to answer.

18 So, there is a direct case. Then, there is, in  
19 essence, a rebuttal case. So, anything further you would  
20 put in is sur-rebuttal, which is not usually permitted.  
21 They do not have a direct case.

22 My only admonition to you is if you know at this  
23 minute, other questions that you want to ask Ms. Montana,  
24 you ask them now while she is here. I am not going to  
25 preclude you from trying to persuade me that she should be

1 called back. But at this stage, I am not inclined to tell  
2 you, 'Oh, yes. If you want her back, you can call her  
3 back.'

4 If the nature of the questioning is that you want  
5 to call her back such that you could have asked it today, I  
6 am not going to let you do it. And you should be forewarned  
7 that it is a very, very heavy burden that you bear in trying  
8 to persuade me to take any further testimony from Ms.  
9 Montana.

10 I am going to give her that instruction. I  
11 overheard Mr. Aronowitz. What I was going to tell you is,  
12 you are going to be excused now, but I am going to instruct  
13 you not to talk to anybody about your testimony. Not  
14 anything that I asked or that anybody else asked or what  
15 your answers were to anybody.

16 THE WITNESS: Yes, sir.

17 THE COURT: Except the lawyers. You can talk to  
18 the lawyers.

19 THE WITNESS: Okay.

20 THE COURT: Except if you talk to the lawyers, Mr.  
21 Weis will get a bill. No. But you can talk to your  
22 lawyers. And, of course, you can talk to your own lawyer,  
23 Mr. Edmundson. But do not talk to, especially Mr. Blabey,  
24 or anybody else that might appear as a witness, until one of  
25 the lawyers tells you it is okay to talk again.



1 THE WITNESS: Okay.

2 THE COURT: If you want to talk to your husband,  
3 just tell him I said you cannot talk to him.

4 THE WITNESS: I won't.

5 THE COURT: You can have some fun.

6 MR. EDMUNDSON: Your Honor, if you are excusing --

7 THE COURT: How about clarifying questions? We  
8 did not get to that.

9 MR. EDMUNDSON: Well, I understand that. You are  
10 excusing this witness, so that if she is to come back, the  
11 Bureau is going to have to get out another subpoena. Am I  
12 correct about that?

13 THE COURT: Well, I do not know. We will talk  
14 about that later. She has appeared when she was ordered to  
15 do so. If I say, 'You come back, and you guys want a  
16 subpoena?' I will give them a subpoena.

17 MR. EDMUNDSON: My point is that it may be that we  
18 would resist for her to come back a second time.

19 THE COURT: Sure.

20 MR. EDMUNDSON: We would want to have the  
21 opportunity to avail ourselves of that right, no matter what  
22 the process is or is not. I am not standing on the habit to  
23 have a new subpoena issued. But the witness is reserving  
24 the right that if she is called back to speak to that. That  
25 is all.

1 THE COURT: Of course And I would say if we made  
2 this with respect to another out of town witness, that if it  
3 is necessary to take further testimony, perhaps we will do  
4 it by speaker phone. You never say never. But you have an  
5 awfully heavy burden. Okay?

6 You are excused now.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 THE COURT: Before we break for lunch, I would  
10 like to go off the record, and I would like to ask that only  
11 the parties' attorneys remain in the room. So, we will go  
12 off the record.

13 MR. NAFTALIN: Do you want the parties to leave,  
14 as well, Your Honor.

15 THE COURT: Yes.

16 MR. RILEY: Just the attorneys?

17 THE COURT: Just the attorneys.

18 (Whereupon, a short recess was taken.)

19 THE COURT: While we were off the record, we were  
20 discussing scheduling matters. There is an outstanding  
21 matter. And that is Mass Media Bureau Exhibit 38 for  
22 identification has not been offered. I wondered if you were  
23 going to offer it, Mr. Helmick?

24 MR. HELMICK: I believe it will be used when we  
25 examine Mr. Blabey. So, I think it would be offered then.

1           THE COURT:  Okay.  We will not do anything with it  
2   until after that.  I did not know.  Okay.

3           We will be in recess until tomorrow morning at  
4   9:30.  Thank you very much.

5           (Whereupon, at 12:55 p.m. , the hearing was  
6   recessed, to reconvene on Friday, December 5, 1997, at 9:30  
7   a.m.)

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## REPORTER'S CERTIFICATE

FCC DOCKET NO.: MM Docket No. 97-122

**CASE TITLE:** Gerard R. Tarro

**HEARING DATE:** December 4, 1997

**LOCATION:** Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 12/18/97

Official Reporter  
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